109TH CONGRESS
1ST SESSION

S. 1406

To protect American workers and responders by ensuring the continued commercial availability of respirators and to establish rules governing product liability actions against manufacturers and sellers of respirators.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2005

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect American workers and responders by ensuring the continued commercial availability of respirators and to establish rules governing product liability actions against manufacturers and sellers of respirators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Respirator Access Assurance Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Each year millions of workers, responders, and citizens in the United States and around the world depend on the availability of respirators made in the United States for protection against exposure to hazardous materials and in the event of terrorist incidents, airborne disease epidemics, and other disasters.

(2) Respirators are tested, and the design and labeling of respirators is regulated by an independent Federal agency, the National Institute for Occupational Safety and Health, which is part of the Centers for Disease Control and Prevention. NIOSH establishes the performance standards for respirators, independently tests and certifies that respirators meet its standards, and performs follow-up field audits of respirators to ensure continued compliance with NIOSH performance standards. Prior to the establishment of NIOSH, respirators were approved by the United States Bureau of Mines.

(3) Respirator manufacturers and sellers do not and cannot control or determine the manner in which their products are used.

(4) Manufacturers and sellers of respirators designed and labeled in compliance with NIOSH requirements have been named as defendants in a sub-

stantial number of product liability claims alleging that these NIOSH-approved designs and warnings are defective.

(5) Respirators are sold in and have an effect on interstate commerce.

(6) Manufacturers of respirators may cease making such products, in principal part because of the costs of litigation.

(7) A continued United States capacity to manufacture and distribute respirators is necessary to assure that these products remain available. Lack of availability of respirators will increase risks to the health of millions of American workers and emergency responders.

(8) The protections set forth in this Act are needed to assure the continued commercial availability of lifesaving respirators.

SEC. 3. DEFINITIONS.

In this Act:

(1) MANUFACTURER.—The term ''Manufacturer'' means any person who, in the course of a business conducted for that purpose, designs, makes, produces, packages, or labels any respirator or component part of a respirator, or engages another to do so.

(2) NIOSH.—The term ''NIOSH'' means the National Institute for Occupational Safety and Health.

(3) NIOSH APPROVAL.—The term ''NIOSH approval'' means a certificate or formal document issued by NIOSH stating that an individual respirator or combination of respirators has met the minimum requirements of part 84 of title 42, Code of Federal Regulations, or part 11 of title 30, Code of Federal Regulations, and that the manufacturer is authorized to use and attach an approval label to any respirator manufactured in conformance with the plans and specifications upon which the approval was based. For purposes of this Act, NIOSH approval shall also mean certification or approval by any Federal Government agency with authority to approve respirators, including the United States Bureau of Mines and the Mine Safety and Health Administration.

(4) RESPIRATOR.—The term ''Respirator'' means any device, including component or replacement parts for a device, designed to provide the wearer with respiratory protection against inhalation of a hazardous atmosphere.

(5) SELLER.—The term ''Seller'' means a person or entity, including a retailer, distributor, or wholesaler, that is regularly engaged in selling respirators.

SEC. 4. EFFECT OF NIOSH APPROVAL OF DESIGN AND LABELING.

(a) IN GENERAL.—A manufacturer or seller of a respirator shall not be subject to any claim for defective design or warning relating to a respirator or any claim which is based on such an allegation if such respirator has received a NIOSH approval, and such respirator is manufactured in compliance with the NIOSH-approved design and labeling in effect on the date of manufacture. This provision shall not apply to a respirator that fails to comply with the NIOSH-approved design and labeling standards in effect on the date of manufacture.

(b) WITHDRAWAL OF APPROVAL.—Subsection (a) shall not apply to a manufacturer or seller of a respirator if NIOSH withdraws its approval for the respirator that is the subject of the claim involved based on a finding by NIOSH that the manufacturer or seller—

(1) withheld from or misrepresented to NIOSH material information about the respirator's design or labeling and the respirator otherwise would not have been approved; or

(2) made an illegal payment to a NIOSH official or employee for the purpose of securing or maintaining approval of the respirator's design or labeling.

(c) STATUTE OF LIMITATIONS.—A statute of limitations that would otherwise apply to claims to which subsection (b) applies shall not begin to run until the date on which NIOSH withdraws its approval for the respirator involved.

SEC. 5. PREEMPTION AND STATUTORY CONSTRUCTION.

(a) PREEMPTION.—The provisions of this Act shall supersede any and all State or local laws insofar as they may now or hereafter relate to any claim for defective design or warning relating to a respirator or any claim which is based on such an allegation if such respirator complied with the NIOSH-approved design and labeling in effect on the date of manufacture.

(b) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to affect any defense available to a defendant under any other provision of State or Federal law, or to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1332 of title 28, United States Code, that otherwise would not exist under applicable law.

SEC. 6. APPLICABILITY.

This Act applies to any civil action in a Federal or State court, on the basis of any legal theory, for harm allegedly caused, directly or indirectly, by a respirator, a respirator manufacturer, or a respirator seller.

SEC. 7. EFFECTIVE DATE.

This Act shall become effective upon enactment and shall apply to any action that has not proceeded to trial as of the date of enactment, regardless of when the respirator was manufactured or sold.

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